



Ethics News

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GOVERNOR KERNAN'S NEW ETHICS ORDERS TAKE EFFECT

On July 5, 2004, five governor's executive orders concerning new ethics guidelines took effect. The executive orders amended the gift rule, added the office of chief investigator, and added restrictions to the post-employment activities of agency heads and employees of the governor's office and lieutenant governor's office. One order requires executive branch lobbyists to register with the Department of Administration and another requires that executive branch employees receive ethics training every two years.

Executive Order 04-08 most drastically changed the rule that applies to the acceptance of gifts by state employees. The change involves state employees' acceptance of things of value from persons that have *business relationships* with the employee's agency.

Here are the differences between the current rule and the requirements set forth in the governor's executive order:

Old Rule: An employee could accept things valued at \$25 or less in a calendar year from a person who has a business relationship with the employee's agency as long as the employee could take no official action toward the gift-giver.

New Standard: Agency employees cannot accept anything of value from a person that has a business relationship with the agency unless an exception applies to the employee's situation.

Both the old rule and the new guidelines have exceptions. The following is a set of compliance guidelines that list the new exceptions. **Note:** *In some instances, the compliance guidelines are less strict than the old exceptions. This was done purposely to clarify the old rule and allow for the acceptance of food and drink in certain situations. Until these guidelines are officially made into rules, the old rule will be enforced.*

Compliance Guidelines

Executive Order 04-08: Gifts

(a) An employee shall not accept for personal use any gifts, favors, services, entertainment, food, or drink from a person that has a business relationship with the employee's agency. The following shall not be subject to this section:

(1) Gifts, favors, services, entertainment, food, or drink from public agencies or public institutions.

(2) Food or drink consumed at a public meeting to which twenty-five (25) or more individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value received at public events, public ceremonies, or commemorating official business.

(4) Food or drink consumed by an employee during negotiations or other activities related to an economic development project.

(5) Reciprocal giving of gifts, favors, services, entertainment, food, or drinks from relatives and social relationships, so long as the gifts or other items of value are not deducted as a business expense and the employee does not exercise decision making authority over a policymaking or procurement decision that affects the business interests of the donor.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Discount and other promotional programs approved and made available to state-employees through the Indiana State Personnel Department or the Indiana Department of Administration.

An employee's state officer or appointing authority may allow exceptions to this guideline in individual cases when consistent with the public interest. An appointing authority or state officer may designate the agency's ethics officer to exercise approval on behalf of the appointing authority or state officer. Such designation shall be in writing and filed with the state ethics commission. If a state officer or an appointing authority approves in writing the receipt of a gift subject to this guideline, the written approval shall be filed with the state ethics commission within thirty (30) days of receipt of the gift, and shall identify the employee, the nature and value of the gift, and the donor of the gift. The written approval shall also state why acceptance of the

gift is in the public interest. The state ethics commission may review such written approvals. In addition, this section does not prohibit contributions to agencies that are made in accordance with applicable law.

(b) A person that has a business relationship with an employee's agency shall not provide any gifts, favors, services, entertainment, food, or drink to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under this guideline.

(c) An employee shall not accept an honorarium for anything that may be considered part of the employee's official duties. A state employee may accept an honorarium or fee for activities not done in connection with the employee's official duties that are prepared on the employee's own time and without the use of state resources. The employee shall not accept an honorarium from any person over whom the employee has decision making authority.

Executive Order 04-08: Gifts (Appearances, Activities and Expenses)

(a) An employee shall not accept payment for travel expenses, including lodging, transportation, and registration fees, for attending events concerning state business from a person who has a business relationship with the employee's agency. An employee's state officer or appointing authority may allow exceptions to this guideline in individual cases when consistent with the public interest. An appointing authority or state officer may designate the agency's ethics officer to exercise approval on behalf of the appointing authority or state officer. Such designation shall be in writing and filed with the state ethics commission. If a state officer or an appointing authority approves in writing the payment of expenses subject to this guideline, the written approval shall be filed with the state ethics commission within thirty (30) days of the event or receipt of expenses, whichever comes first, and shall identify the employee, the amount of the expenses, and the setting of the event. The written approval shall also state why payment of expenses is in the public interest. The state ethics commission may review such written approvals. In addition, this section does not prohibit contributions to agencies that are made in accordance with applicable law.

(b) A person that has a business relationship with an employee's agency shall not pay such employee's travel expenses if the employee would not be permitted to accept the payment under this guideline.

(c) If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state office or employee or their official representative on behalf of the state, such person is requested to remit the treasurer of the state any such amounts. The treasurer of the state shall quietus such funds into the general fund.

What's New?

At the Commission . . .

Governor Joe Kernan recently appointed two new Commissioners to serve on the State Ethics Commission:

■ Thomas John Brunner, Jr.,
Attorney with Baker & Daniels Law Firm in South Bend

■ Priscilla Diane Keith, General Counsel, Health and Hospital Corp., Indianapolis

Both Commissioners' terms expire September, 2007.

Former Commissioners, Sue Tuohy MacGill (February 1995 - June 2004) and Alysa Rollock (January 1996 - June 2004) left the Commission at the end of their terms.

Ethics Classes Open

Ethics Orientation

August 24, October 9,
December 7
(10:00 - 11:00 a.m.)

Supervisors and Managers

August 25, October 20,
December 8
(10:00 -12:00 p.m.)

Classes are in the State Conference
Center or Training Center
Indiana Government Center South
402 W. Washington St., Indianapolis, IN

**Please check directory on day of class
for room number.**

To register, call (317) 232-3850 or visit our
Web site at www.ethics.IN.gov

Recent Enforcement Proceedings

The State Ethics Commission approved the following report on June 9, 2004.

Case #02-C-13

A former state employee was found in violation of [40 IAC 2-1-6](#), when, as Deputy Commissioner of the Bureau of Motor Vehicles, she accepted a gift of seafood valued at \$99 from a contractor who had a business relationship with her agency.

The Deputy Commissioner also accepted an invitation from the contractor to visit the contractor's yacht while the Deputy Commissioner and her family were on vacation in Florida. While visiting the yacht, the Deputy Commissioner and her family were served lunch by the contractor.

The Deputy Commissioner did not have the authority to draft contracts, sign contracts, negotiate contracts, approve or accept contracts or renew contracts on behalf of the BMV. However, the BMV official was responsible for overseeing the work performed by the contractor. Her duties included matters of recourse and were not merely ministerial type responsibilities.

The case is under appeal by the former Deputy Commissioner.

Staff Advice

This article briefly reviews questions recently addressed by the Ethics Commission staff. The advice is not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your [agency Ethics Officer](#) or the State Ethics Commission.

NOTE: *Please be advised that the opinions in these answers merely interpret and apply the State Ethics Commission's laws, regulations, and policies. The fact scenarios presented in these questions could possibly violate other agency laws, regulations, rules, or policies.*

Q. What does the term business relationship with a state agency mean?

A. "Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

- (A) a pecuniary interest in a contract or purchase with the agency; or
- (B) a license or permit requiring the exercise of judgment or discretion by the agency.

Q. Under the new ethics rules, how often does a state employee need to take ethics training?

A. Every two years. New employees are required to take orientation within 6 weeks of their date of hire. Training can be taken through an employee's agency, or by attending one of the classes offered by the Ethics Commission, or online at the Commission's [Web site: <http://www.in.gov/ethics/training/>](http://www.in.gov/ethics/training/).

Q. Can an employee still accept a gift valued at less than \$25 from a person who has a business relationship with the employee's agency?

A. Executive Order 04-08 **prohibits an employee from accepting any gift** from a person who has a business relationship with the employee's agency.

Q. If an employee is attending an educational seminar sponsored by a vendor of the employee's agency, can the employee accept a lunch that is being offered to all attendees?

A. This situation falls under an exception to the gift rule. First, the employee should ask their Ethics Officer for approval to attend the seminar and if approval is granted, the employee may accept the luncheon.

Q. If I'm attending a convention or conference, and vendors that have a business relationship with my agency are giving away items like key chains and magnets, can I accept them?

A. Yes. You may accept items of nominal value that are given away to all participants at a convention or conference.

Q. Our agency would like to give cash awards to employees in recognition of their outstanding job performances. Are we allowed to do so?

A. Giving cash awards to employees would be affected by the following:

(b) A state officer or employee shall not solicit or accept compensation other than that provided for by law for such state officer or employee for the performance of official duties.

(c) A state officer or employee, other than in performing duties in making payments to other state officers or employees as provided by law, shall not pay or offer to pay any state officer or employee any compensation for the performance of official duties.

We've told agencies in the past that giving money (or savings bonds) for employee recognition looks too much like additional compensation for performing a job they are already paid to do. Accordingly, plaques or other non-money awards may be given instead.

Q. Can employees accept discounts offered through the Department of Personnel? And is Personnel allowed to send these offers to us by e-mail?

A. As far as Personnel using e-mail to advertise perks to state employees, this is permissible under [40 IAC 2-1-9\(f\)](#) because Personnel has a policy allowing it to do this.

Unless you have discretion with respect to the sponsor of the discount, you may accept it. For example, last year, we put out an opinion concerning Sam's Club's offer of free memberships worth \$25 to state employees. Basically, we allowed state employees to take advantage of this offer, with the exception of inspectors who worked for the State Fire Marshall's Office (because these employees inspected Sam's Club).

Commission meetings are open to the public and held the second Thursday of the month. Normal starting time is 10:00 a.m.